

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8037 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

G S R T C

Versus

CJ PATEL C/O SOUTH GUJARAT STATE TRANSPORT WORKERS ASSO.

Appearance:

MR HS MUNSHAW for Petitioner

MR IS SUPEHIA for Respondent

CORAM : MR.JUSTICE J.N.BHATT

Date of decision: 06/12/96

ORAL JUDGEMENT

Rule. Service of Rule is waived by Mr Supehia, learned advocate for the respondent-workman. Upon joint request and considering the facts, the matter is taken up for final hearing today.

The respondent is an employee of the

petitioner-Corporation and is working in the cadre of driver . On 7.3.1981, the respondent was on duty and taking the bus of the Corporation bearing No. GRS 7792 from Dharampur to Soudha. At that time, it was alleged that he lost control over the steering of the bus and met with an accident resulting into injuries to two passengers and damage to the bus to the extent of Rs. 500/-. The emergency door of the bus was broken open to salvage the situation. Consequent upon the report of the said accident, a charge sheet was issued for departmental inquiry against the respondent-driver. The petitioner Corporation, after holding departmental inquiry dismissed the respondent from service vide an order dated 26.10.1982. The said order of dismissal came to be challenged by the respondent in the first departmental appeal before the Divisional Controller of the petitioner-Corporation. The respondent's challenge partly succeeded in the first appeal as the appellate authority quashed the dismissal order and directed reinstatement in service on the minimum basic pay scale. It was also directed that interim period of dismissal should be treated as an extra ordinary leave.

The respondent workman thereafter questioned the order of the first appellate authority before the Industrial Tribunal at Surat by filing Reference No.278 of 1987. The Industrial Tribunal allowed the Reference and the order of the first appellate authority came to be quashed with a direction to the petitioner Corporation to give all necessary financial benefits to the respondent driver. Therefore, this petition under Articles 226/227 of the Constitution of India at the instance of the petitioner-Corporation.

After having given anxious thought to the facts and circumstances emerging from the record of the case and hearing the rival submissions of the learned advocates for the parties, it is found that though there was no direct admission of negligence on the part of the respondent, it is an admitted fact that the bus in question driven by the respondent on 7.3.1981 met with an accident when the respondent was driving the said bus near small hill area near village Dabkhal. He lost control over the steering of the bus as a result of which, the bus rolled down and stopped on account of big stone near river bed which otherwise would have resulted into major mishap. The aforesaid aspect is itself eloquent and radiates an imprint of negligence of the driver. The accident resulted into injuries to two passengers and damage to the bus. It is not the case of the respondent that there was some minor damage or

accident happened on account of unroadworthiness or condition of the bus involved in the accident. Even the principle of doctrine of res ipsa loquitur can be invoked by fastening liability on account of the respondent driver. This aspect is unfortunately not appreciated by the Industrial Tribunal while quashing the order of the first appellate authority. It is, therefore, necessary for this court to interfere with the impugned order of the Industrial Tribunal and put it in legal and proper shape.

It is true that there was no major mishap and injuries caused to the passengers were not very serious by grace of God. Considering the relevant factors emerging from the record of the present case, ends of justice will be satisfied if the respondent is imposed penalty of stoppage of two increments without future effect and denied back wages during the period of dismissal and reinstatement which really would be around four months.

In the result, the impugned award of the Industrial Tribunal is partly quashed and set aside. The Tribunal has not imposed any penalty and has awarded full back wages. Penalty of stoppage of two increments without future effect is imposed. Dismissal order came to be recorded on 26.10.1982 in the departmental inquiry and the first appellate authority quashed the dismissal order by its order dated 29.1.1983. It is stated at the bar that approximately the period between dismissal and reinstatement comes to around four months. In the circumstances and the peculiar facts, the respondent workman shall not be entitled to back wages during the said period. The impugned order of Tribunal is modified to that extent by allowing this petition partly. There shall be no order as to costs.

Learned advocate for the respondent Mr. Supehia is right in his submission that an amount of Rs. 30,000/deposited by the petitioner Corporation pursuant to the order of this court at an admission stage may be paid to the respondent which will be subject to adjustment against monetary benefits arising out of the order of the Tribunal modified by this court. This submission appears to be quite justified. In the circumstances, the Registrar of this court is directed to invest the amount of Rs. 30,000/- in a fixed deposit receipt in a nationalised bank in the name of the respondent workman for a spell of not less than five years and to hand over the receipt to the respondent on due identification and the interest which shall accrue therefrom shall be periodically paid by the bank concerned to the respondent. This payment shall be subject to adjustment

towards arrears and other monetary benefits to be paid by
the petitioner Corporation to the respondent workman.
